



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AO62

Community Residential Care

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rule adopts as final, without change, an interim final rule amending the Department of Veterans Affairs (VA) regulations concerning approval of non-VA community residential care (CRC) facilities to allow VA to waive such facilities' compliance with standards that do not jeopardize the health or safety of residents. As amended, the regulation allows VA to grant a waiver of a CRC standard in those limited circumstances where the deficiency cannot be corrected to meet a standard provided for in VA regulation. This rulemaking also makes a certain necessary technical amendment to correct a reference to the section addressing requests for a hearing.

DATES: Effective Date: This final rule is effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Nancy Quest, Director, Home and Community Based Services (10P4G), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-6064. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In an interim final rule published in the Federal Register on May 29, 2013, at 78 FR 32124, VA amended 38 CFR 17.65, which contains VA's regulations governing approvals and provisional approvals of CRC facilities. The interim final rule allowed VA to waive one or more of the standards in 38 CFR 17.63 for the approval of a particular CRC facility, provided that a VA safety expert certifies that the deficiency does not endanger the life or safety of the residents; the deficiency cannot be corrected; and granting the waiver is in the best interests of the veteran in the facility and VA's CRC program. The rulemaking also made a certain necessary technical amendment to §17.66. The interim final rule was effective immediately upon publication and provided a 60-day comment period, which ended on July 29, 2013. VA received no public comments and therefore makes no changes to the regulation.

Based on the rationale set forth in the interim final rule, VA is adopting the interim final rule as a final rule with no changes.

#### Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs concluded that there was good cause to publish the interim final rule without prior opportunity for public comment and to publish the rule with an immediate effective date. The Secretary found that it was contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. The interim final rule was necessary to address an immediate need to provide a mechanism that will allow VA to grant a waiver to a CRC facility that cannot obtain full approval because of a minor deviation from regulatory standards that cannot be corrected and

does not endanger the lives or safety of the veteran residents. Although approval would be rescinded because of a minor and uncorrectable deviation from standards unrelated to health or safety, veterans may be dissuaded from maintaining their residence in such a facility. Providing a waiver in that circumstance will preclude the need to terminate a CRC facility's approval based on an uncorrectable minor deviation from non-safety related standards. This eliminates the potential that resident veterans will needlessly choose to leave an otherwise healthy, safe, and suitable living arrangement.

Regulations in place prior to the effective date of the interim final rule did not provide for any waiver of standards. It is in the public interest for a veteran not to be removed from a stable living situation based solely on a minor deviation from standards that does not threaten life or safety.

To prevent veterans from needlessly choosing to leave affected CRC facilities because the facilities are no longer on the approved list, and in order to ensure timely implementation of the program established by this rule, and for the reasons stated above, the Secretary also found, in accordance with 5 U.S.C. 553(d)(3), good cause for the interim final rule to be effective on the date of publication.

#### Effect of rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to

conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

#### Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521). Documentation that a VA safety expert may request from a CRC facility to support a waiver determination, as provided under 38 CFR 17.65(d)(1), would not qualify as “information” under the PRA because collection of this information would be conducted on an individual case-by-case basis and would require individualized information pertaining to the specific deficiency identified by the VA safety expert. We believe that this collection is therefore exempt from the PRA requirements, as provided under 5 CFR 1320.3(h)(6) (excluding from PRA requirements a “request for facts or opinions addressed to a single person).”

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will have little, if any, economic impact on a few small entities. VA may waive a standard under this rulemaking provided a VA safety expert certifies that the deficiency does not endanger the life or safety of the residents, the deficiency cannot be corrected, and granting the waiver is in the best interests of the veteran in the facility and VA’s CRC program.

In order to reach the above determinations, the VA safety expert may request supporting documentation from the CRC facility. VA believes supplying this information will constitute an inconsequential amount of the operational cost for those CRC facilities. VA believes that, at most, only a few CRC facilities would qualify for a waiver. On this basis, the Secretary certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health

or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published."

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; and 64.022, Veterans Home Based Primary Care.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on December 6, 2013, for publication.

### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: January 3, 2014

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Robert C. McFetridge, Director,  
Office of Regulation Policy and Management,  
Office of the General Counsel,  
Department of Veterans Affairs.

Based on the rationale set forth in the Federal Register at 78 FR 32124 on May 29, 2013, VA is adopting the interim final rule as a final rule with no changes.

[FR Doc. 2014-00099 Filed 01/07/2014 at 8:45 am; Publication Date: 01/08/2014]